



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
P. O. Box 1720
Rancho Cordova, CA 95741-1720

STEVE WESTLY
Chair
CAROLE MIGDEN
Member
DONNA ARDUIN
Member

January 31, 2004 Franchise Tax Board Litigation Roster

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: www.ftb.ca.gov/law/Lit_roster.pdg.

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX
CLOSED CASES – JANUARY 2004

Case Name

Court Number

None

FRANCHISE AND INCOME TAX
NEW CASES – JANUARY 2004

Case Name

Court Number

None

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

JANUARY 2004

ACKERMAN, PETER & JOANNE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC296334

Filed – 05/23/03

Taxpayer's Counsel

FTB's Counsel

Holly Kendig, Christopher W. Campbell

Anthony Sgherzi

O'Melveny & Myers, LLP

- Issues
1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships.
 2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993.
 3. Whether plaintiffs timely filed the suit for refund.

Years 1992 and 1993 Amount \$4,912,037.26

Status Trial (2 days) scheduled for March 22, 2004. Answer to First Amended Complaint filed on November 26, 2003; Discovery proceeding.

AGUSTIN, REMIGIO I. v. Franchise Tax Board

Alameda County Superior Court Docket No. HG03114558 Filed – 09/02/03

Taxpayer's Counsel

FTB's Counsel

Remigio I. Agustin, In Pro Per

Paul Gifford

- Issues
1. Whether application of the statute of limitations in section 19306 of the Revenue and Taxation Code in the circumstance of this case is in violation of the United States Constitution.
 2. Whether the doctrine of equitable tolling should be applied in the circumstances of this case to allow plaintiff's claim for refund.

Year 1996 Amount \$1,607.38

Status Defendant's Reply to plaintiff's Opposition to Demurrer filed November 4, 2003. Plaintiff's Reply to Defendant's Opposition to Demurrer filed November 7, 2003. Demurrer Sustained Without Leave to Amend. Notice of Order Sustaining Demurrer to Complaint filed on November 18, 2003.

AMDAHL CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 321296

Filed – 05/14/01

Appellate Court 1st District Court No. A101101 (FTB)

Appellate Court 1st District Court No. A101203 (Amdahl)

Taxpayer's Counsel

FTB's Counsel

Timothy K. Roake

Kristian Whitten

Fenwick & West LLP

- Issues
1. Whether Section 25106 was properly applied to the facts of this case in a manner which does not discriminate against foreign commerce.
 2. Whether Section 24411 was properly applied in this case.
 3. Whether Section 24411 discriminates against foreign commerce.
 4. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is a dividend for purposes of Sections 24411 and 25106 of the Revenue and Taxation Code.
 5. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is gross income.

Years 1988, 1989, 1991 and 1992 Amount \$2,935,439.00

Status Plaintiff/Respondent's Request for Oral Argument mailed to all parties on October 10, 2003.

AMERICAN GENERAL REALTY INVESTMENT CORP., INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03425690

Filed – 10/23/03

Taxpayer's Counsel

FTB's Counsel

Roy E. Crawford, Robert J. Waldow
Heller, Ehrman, White & McAuliffe, LLP

David Lew

- Issues
1. Whether dividends received from insurance subsidiaries are, as a matter of law and fact, nonbusiness income.
 2. Whether section 24344(b) controls the allocation of interest expense.
 3. Whether section 24425 was properly applied to allocate expenses to insurance company dividends.
 4. Whether the insurance subsidiaries constitute a separate unitary business of the taxpayer.
 5. Whether the increase in the income assigned to California fairly reflects the taxpayer's business in this state.

Year 1991 Amount \$2,824,983.00

Status Case Management Conference scheduled for March 26, 2004.

BRESLOW, BARRY & WENDY v. Franchise Tax Board

Los Angeles Superior Court Docket No. 03K20961

Filed – 12/02/03

Taxpayer's Counsel

FTB's Counsel

Charles P. Rettig, Steven D. Blanc & Sharyn Fisk Felix E. Leatherwood
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

- Issues
1. What portion of the Program Area Sales and Use Tax Credit passes through to shareholders in an S Corporation?
 2. Whether the Franchise Tax Board should be equitably estopped from denying the claim for refund.

Year 1994 Amount \$49,500.00

Status **Answer to the Complaint filed on January 22, 2004. Final Status Conference scheduled for July 8, 2004; Court Trial scheduled for July 12, 2004.**

COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS00707

Filed – 02/07/03

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts
Morrison & Foerster, LLP

FTB's Counsel

Steven J. Green

Issues 1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.
2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years 1974-1982, 1984-1987, 1989-1991 Amount \$2,912,696.00

Status Trial Setting Conference scheduled for March 1, 2004. **Discovery proceeding.**

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No. 511821

Filed - 12/20/89

Court of Appeal, 3rd Appellate District, No. 3-CV-C020733

Taxpayer's Counsel

Joanne Garvey, & Teresa Maloney
Heller, Ehrman, White & McAuliffe

FTB's Counsel

Steven Green

Issue Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

Years 1980 through 1985 Amount \$1,137,006.98

Status On Appeal for decision in favor of Defendant/Respondent, waiting for Court of Appeal to set date for Oral Argument.

FARMER BROS. CO. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC237663

Filed – 09/29/00

Court of Appeal, 2nd Appellate District Court No. 160061

California Supreme Court No. S117131

U.S. Supreme Court No. 03-776

Taxpayer's Counsel

Robin C. Campbell, Esq.
Anglin, Flewelling, Rasmussen, Campbell & Trytten, LLP

Counsel of Record

Benjamin F. Miller

Issue Whether Section 24402 of the Revenue and Taxation Code is unconstitutional under the United States Constitution.

Years 06/30/92 through 6/30/98 Amount \$814,705.00

Status **Petitioner FTB's Reply Brief filed on January 2, 2004. Scheduled for conference February 20, 2004.**

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC-02-404182

Filed – 02/06/02

Taxpayer's Counsel

FTB's Counsel

John E. Cassinat & Ronald L. Carello

Marguerite Stricklin

Cassinat Law Corporation

Issues 1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years 1991 through 1994 Amount \$149,696.00

Status Letter from Hon. Ernest H. Goldsmith dated December 10, 2003, re: Tentative Statement of Decision, page 23, paragraph 4, and Controverted Issues and Proposals for Statement of Decision, page 20, paragraph 45.

FREYERMUTH, JANINE v. Franchise Tax Board

San Francisco Superior Court Docket No. 308985

Filed – 01/04/00

Taxpayer's Counsel

FTB's Counsel

Janine Freyermuth, In Pro Per

Randall P. Borcharding

Issue Whether the taxpayer was a resident of California.

Years 1986 and 1987 Amount \$47,471.00

Status Order to Show Cause Re: Dismissal (CRC225).

FREYERMUTH, REED v. Franchise Tax Board

San Francisco Superior Court Docket No. 308973

Filed – 01/04/00

Taxpayer's Counsel

FTB's Counsel

Joel K. Belway, Esq.

Randall P. Borcharding

Issue Whether the taxpayer was a resident of California.

Years 1986 and 1987 Amount \$47,471.00

Status U.S. Bankruptcy Court Order – Discharge of Debtor granted on February 19, 2003.

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404

Filed – 03/06/02

Court of Appeal, 2nd Appellate District No. B165665Taxpayer's Counsel

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayoob

FTB's Counsel

Stephen Lew, Donald

Currier & Joseph O'Heron

- Issues
1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
 2. Whether interest income was properly characterized as business income.
 3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
 4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
 5. Whether various receipts from intangible assets were properly excluded from the sales factor.
 6. Whether research tax credits were properly limited to the entity incurring the expense.
 7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
 8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
 9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years 1986 through 1988 Amount \$10,692,755.00

Status **Defendant/Respondent and Cross-Appellant's Request to Take Judicial Notice of Recently Published Decision; Order Thereon filed January 22, 2004. Order Granting Respondent and Cross-Appellant's Request for Judicial Notice of Recently Published Decision, *Union Pacific Corporation v. Idaho State Tax Commission* (Idaho Supreme Court, Jan. 4, 2004) No. 29219, 2004 WL 24961, granted on January 26, 2004, subject to the Opinion Being Released for Publication.**

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 305968

Filed – 11/12/03

Taxpayer's Counsel

Eric L. Troff, Esq.

Gibbs, Giden, Locher & Turner, LLP

FTB's Counsel

Donald Currier

Issue Whether Plaintiffs were entitled to a business bad debt reduction.

Years 1990 and 1993 Amount \$65,738.00

Status Answer to the Complaint filed December 23, 2003.

HARDIE, GEORGE G. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC292256

Taxpayer's CounselRichard E. Posell, Gregory P. Korn
Greenberg, Glusker, Fields, Claman,
Machtlinger & Kinsella, LLP

Filed – 03/18/03

FTB's CounselAnthony Sgherzi
George M. Takenouchi

Issue Whether Plaintiff was a resident of California for the year in issue.

Year 1993 Amount \$1,172,932.00

Status **Further Status Conference held on January 7, 2004; Final Status Conference scheduled for July 8, 2004; Trial commencing July 12, 2004.**

HYATT, GILBERT P. v. Franchise Tax Board

Clark County Nevada District Court No. A382999

Taxpayer's CounselThomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen
H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel

Felix Leatherwood

Issues

1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years 1991 and 1992 Amount \$13,204,611.00

Status Clark County District Court:
Plaintiff's Discovery Commissioner's Report and Recommendations filed January 8, 2004. Defendant's Response to Plaintiff's Motion for Pretrial Conference and Scheduling Order (Filed Under Seal) filed January 9, 2004. Defendant's 1) Objections to Discovery Commissioner's Report and Recommendations Regarding Defendant's June 7, 2000, and September 27, 2002, Motions to Compel, 2) Request for Leave of Court to File Points and Authorities, and 3) Request for Oral Argument filed January 16, 2004. Hearing on Motion for Pretrial Conference and scheduling order held on January 26, 2004.

J.H. MCKNIGHT RANCH, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 303484

Court of Appeal, 1st Appellate District No. A098729Taxpayer's CounselPaul D. Fogel, Esq..
Reed Smith Crosby Heafey, LLP

Filed - 05/13/99

FTB's Counsel

David Lew

- Issues
1. Whether the court has jurisdiction when the interest owing with respect to the underlying assessment has not been paid.
 2. Whether the "tax benefit" rule operates to allow income realized from the cancellation of indebtedness to be disregarded.
 3. Whether the "contested liability doctrine" allows deductions incurred in prior years to be reported in the year the indebtedness was discharged.

Year 1990 Amount \$97,258.00

Status California Supreme Court Denied Franchise Tax Board's Request for an Order Directing Depublication of the Opinion on November 12, 2003.

JIBILIAN, TONY & DOROTHY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC298685

Taxpayer's Counsel

Derek L. Tabone, Esq.

Law Offices of Tabone, APC

Filed - 07/09/03

FTB's Counsel

Brian Wesley

Elisa Wolfe-Donato

Issue Whether Plaintiffs have taxable income for the years involved.

Years 1999-2001 Amount \$209,742.00

Status Trial continued to January 5, 2004. Status Conference scheduled for January 22, 2004. Case Management Conference scheduled for March 8, 2004. **Defendant's Statement-Case Management filed on January 7, 2004. Status Conference held on January 22, 2004. Defendant's Notice of Ruling (Demurrer to First Amended Complaint; Notice of Order re: Case Management Conference) filed on January 23, 2004. Plaintiffs' Notice of Lodging Original Signature Page of Stipulation for Leave to File Second Amended Complaint and Order Thereon filed January 27, 2004. Plaintiffs' Stipulation for Leave to File Second Amended Complaint and Order Thereon filed January 28, 2004. Plaintiffs' Second Amended Complaint filed January 28, 2004.**

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Taxpayer's Counsel

Edwin P. Antolin

Silverstein & Pomerantz

Jordan M. Goodman, Brian L. Browdy

Horwood, Marcus & Berk

Filed - 05/21/02

FTB's Counsel

George C. Spanos

- Issues
1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
 2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year 1987 Amount \$133,042.00

Status Order Continuing Trial Date and Joint Stipulation to Master Calendar Court on April 5, 2004. Settlement Conference continued to March 16, 2004. **Plaintiff's Substitution of Attorney, Edwin P. Antolin, Morrison & Foerster, filed on December 16, 2003. Defendant's Supplemental Brief Pursuant to Court's Direction filed on January 12, 2004. Plaintiff's Supplemental Brief in Support of Plaintiff's Motion for Summary Judgment, Index of Non-California Authority filed on January 30, 2004.**

K-MART, CORPORATION, et al. v. Franchise Tax Board

U.S. Bankruptcy Court for the Northern District of Illinois
Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420

Filed – 04/11/03

Taxpayer's Counsel

Charles F. Smith
Skadden, Arps, Slate, Meagher & Flom

FTB's Counsel

Michael Cornez
Larry Fischer

- Issues
1. Whether gain realized on the sale of 20+% interest in an Australian retailer, Coles, was business income.
 2. Whether the gain realized on the sale of the interest in Coles was properly treated for AMT purposes.
 3. Whether dividends and interest received with respect to Coles was business income.
 4. Whether the taxpayer's request to account for its Canadian inventory on a LIFO basis was properly denied.
 5. Whether two insurance subsidiaries were properly excluded from the combined report.
 6. If the insurance subsidiaries were includible in the combined report, whether adjustments need to be made to the property and sales factors.
 7. Whether proceeds from the short-term investment of financial assets were properly excluded from the sales factor.
 8. Whether section 24402 is constitutional.
 9. Whether adjustments based upon federal RAR's were correctly made.
 10. Whether there were other unspecified errors in adjustments made or not made to the taxpayer's returns.
 11. Whether an under-payment penalty was properly imposed.

<u>Years</u>	1986-1989, 1992-1994, 1999 & 2000	<u>Amount</u>	\$3,524,625.00 - Tax \$ 82,590.01 - Penalty
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Status Summons and Complaint Under 11 U.S.C. § 505 U.S. Bankruptcy Court for the Northern District of Illinois Eastern Division was filed by fax on April 17, 2003.

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0
Court of Appeal, 1st Appellate District Court No. A102915

Filed – 04/09/01

Taxpayer's Counsel

Edwin P. Antolin
Morrison & Foerster, LLP

FTB's Counsel

Joyce Hee

- Issues
1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.

2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years 1993 and 1994 Amount \$2,185,718.00

Status Notice from the Court of Appeal postponing Action on Plaintiff/Appellants' Request for Judicial Notice filed December 9, 2003.

MARKEN, DONALD W. & CLAUDINE H v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Filed - 04/05/99

Court of Appeal, 1st Appellate Dist. No. A091644

California Supreme Court No. S 104529

Taxpayer's Counsel

William E. Taggart, Jr.

Taggart & Hawkins

FTB's Counsel

Marguerite Stricklin

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status Status Conference held on November 6, 2003.

MARRO, DONALD C. AND LILLIAN S. CLANCY v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 02-414788 Filed – 11/18/02

Court of Appeal, 1st Appellate District Court No. A104139

Taxpayer's Counsel

Donald C. Marro, In Pro Per

FTB's Counsel

Kristian Whitten

Issue Whether assessments based on federal adjustments were timely made.

Years 1993 and 1994 Amount \$9,267.00

Status Calendar Notice sent by the Court on December 16, 2003, scheduling Oral Argument for January 22, 2004. Plaintiffs/Appellants' Notice of Waiver of Oral Argument filed on December 29, 2003.

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 03424737

Filed - 09/24/03

Taxpayer's Counsel

Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang

Pillsbury Winthrop, LLP

FTB's Counsel

Anne Michelle Burr

- Issues
1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.
 2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

<u>Years</u>	1993 and 1994	<u>Amount</u>	\$606,744.00
<u>Status</u>	Answer to the Complaint filed on November 13, 2003. Case Management Conference scheduled for February 24, 2004.		

MICROSOFT Corporation v. Franchise Tax Board
San Francisco Superior Court Docket No. 400444
Court of Appeal, 1st Appellate Dist. Div. 3 No. A105312
Taxpayer's Counsel
James P. Kleier, Esq.
Preston Gates & Ellis, LLP

Filed – 10/19/01
FTB's Counsel
Julian O. Standen

Issues

1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

<u>Year</u>	1991	<u>Amount</u>	\$1,879,809.00
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Status **Defendant/Appellant's Notice of Appeal and Request for Transcript filed on January 9, 2004.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board
San Diego Superior Court Docket No. GIC772282
Court of Appeal, 4th Appellate Dist. Division 1, No. D035601
Taxpayer's Counsel
Steve Mather.
Kajan, Mather and Barish

Filed – 08/27/01
FTB's Counsel
Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

<u>Year</u>	1993	<u>Amount</u>	\$227,246.00
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Status Defendant/Appellant's Civil Case Information Statement filed on December 3, 2003. Minute Order filed December 12, 2003, re: attorney's fees and costs. Plaintiffs as prevailing party entitled to costs on issue of fair allocation of covenant. Further records to be submitted. Defendant/Appellant's Proposed Briefing Sequence filed on December 17, 2003. Letter filed on December 24, 2003, by attorney Draper confirming agreement with Defendant/Appellant's re: briefing schedule.

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381

Filed – 08/27/01

Court of Appeal, 4th Appellate Dist. Division 1, No. D035601Taxpayer's CounselFTB's Counsel

Steve Mather.

Leslie Branman-Smith

Kajan, Mather and Barish

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$670,825.00

Status Defendant/Appellant's Civil Case Information Statement filed on December 3, 2003. Minute Order filed December 12, 2003, re: attorney's fees and costs. Plaintiffs as prevailing party entitled to costs on issue of fair allocation of covenant. Further records to be submitted. Defendant/Appellant's Proposed Briefing Sequence filed on December 17, 2003. Letter filed on December 24, 2003, by attorney Draper confirming agreement with Defendant/Appellant's re: briefing schedule.

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Filed – 12/30/02

Taxpayer's CounselFTB's Counsel

Antolin, Pilar M. Sansone, Amy Silverstein
Silverstein & Pomerantz, LLP

Gregory Price

Issues 1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years 1989 through 1994 Amount \$2,694,192.00

Status Plaintiff's Substitution of Attorney sent by mail to Mr. Greg Price, Stephen Lew, Charles J. Moll III and John L. Palmer on January 5, 2004. Case Management Conference held on January 9, 2004.

NEW GAMING SYSTEMS, INC. v. Franchise Tax Board

U.S. District Court For The Eastern Dist. No. CIVS-03-1126

Filed – 05/27/03

Taxpayer's CounselFTB's Counsel

Spencer T. Malysiak

Michael J. Cornez

Spencer T. Malysiak Law Corp.

Issues 1. Whether the federal courts have jurisdiction to review a denial of a claim for refund of state taxes and issue a declaratory judgment as to plaintiff's liability for state taxes.
2. Whether the Indian Gaming Regulatory Act (25 U.S.C. 2701) pre-empts state taxation of income earned by non-Indians from operating a casino.

Year 1996 Amount \$2,562.93

Status Hearing on Motion to Dismiss on October 6, 2003. Memorandum and Order signed by Judge Shubb granting Defendant's Motion to Dismiss filed October 8, 2003.

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board

Superior Court Docket No. 03AS05705

Filed – 10/10/03

Taxpayer's Counsel

FTB's Counsel

Spencer T. Malysiak

Michael Cornez

Spencer T. Malysiak Law Corp.

Issues

1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996?
2. Whether a declaratory relief action can be brought to prevent the collection of tax.
3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years 1996 and 1997 Amount \$90,773.05

Status **Defendant's Memorandum of Points and Authorities in Support of Demurrer sent by mail to Spencer T. Malysiak on January 21, 2004.**

NOBLE, HOMER E. AND STEPHANIE F. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC273634

Filed - 05/09/02

Court of Appeal, 2nd Appellate Dist. No. B167881

Taxpayer's Counsel

FTB's Counsel

Richard W. Craig

Anthony Sgherzi

Attorney At Law

Issue The issue is on what date during 1994 did plaintiffs cease to be residents and domiciliaries of California?

Year 1994 Amount \$151,632.00

Status **Defendant/Respondent's Brief filed on January 14, 2004. Plaintiffs/Appellants' Reply Brief filed on January 30, 2004.**

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386

Filed – 07/25/02

Court of Appeal, 2nd Appellate Dist. No. B169465

Taxpayer's Counsel

FTB's Counsel

Richard C. Field

David Bornstein

Bingham McCutchen LLP

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status Record on Appeal R-1 (Rule 5.1), filed on December 31, 2003.

OTN, INC. & AFFILIATES v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC301102

Taxpayer's Counsel

Thomas K. Bourke

Law Office of Thomas K. Bourke

Filed – 08/20/03

FTB's Counsel

Anthony Sgherzi

Issue Whether Plaintiff is entitled to a deduction for bad debts.

Year 1995 Amount \$1,447,375.00

Status Post-Mediation Status Conference scheduled to March 10, 2004, Final Status Conference scheduled for September 7, 2004. Trial scheduled for September 13, 2004. **Discovery proceeding.**

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 319008

Court of Appeal, 1st Appellate Dist. Div. 2 No. A104602

Taxpayer's Counsel

Allan L. Schare

McDermott, Will & Emery

Filed – 02/20/01

FTB's Counsel

David Lew

Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status **Plaintiff/Appellant's Stipulation of Extension to File Brief filed on January 21, 2004.**

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board

San Francisco Superior Court Docket No. 324518

Appellate Court – 1st Appellate Court No. A102401

Taxpayer's Counsel

Edward Winslow

Layman, Lempert & Winslow

Filed – 09/13/01

FTB's Counsel

Marguerite Stricklin

Issues 1. Whether the plaintiffs became residents of California on April 10, 1990.
2. Whether "guaranteed payments" received by plaintiffs while residents of California from a partnership could be included in the income taxed by California.

Years 1990, 1996 through 1999 Amount \$144,278.00

Status Plaintiffs/Respondents' Request for Oral Argument filed on December 1, 2003.

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board

San Francisco Superior Court Docket No. 414931

Filed – 11/21/02

Appellate Court, 1st Appellate Dist. Court No. A105155*Taxpayer's Counsel*

Jeffrey M. Vesely, Esq.

Richard E. Nielsen, Esq.

Pillsbury Winthrop, LLP

FTB's Counsel

David Lew

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,133,040.00

Status **Plaintiff's Notice of Appeal received by the Court on January 12, 2004.**

TOY'S "R" US, Inc. & Affiliates v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Filed - 07/17/01

Court of Appeal, 4th Appellate Court No. C045386*Taxpayer's Counsel*

Eric J. Coffill

Carley A. Roberts

FTB's Counsel

Michael J. Cornez

Issue Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years 1991 through 1994 Amount \$5,342,122.00

Status **Plaintiffs/Appellants' and Defendant/Respondent's Stipulation Extending Time for Filings Briefs, sent by mail on January 12, 2004.**

U.S. AIRWAYS GROUPS, INC. et al. v. Franchise Tax Board

U.S. Bankruptcy Court, Eastern Dist. of Virginia No. 02-83984-SSM

Filed – 05/13/03

Taxpayer's Counsel

John Wm Butler, Jr., John K. Lyons, Esq.

Skadden, Arps, Slate, Meagher & Flom

FTB's Counsel

Lawrence K. Keethe

Mark D. Silvershotz

Issue What date plaintiff and several subsidiaries became a single unitary business?

Year 1988 Amount \$2,651,934.78

Status **Stipulation Concerning Proof of Claim Nos. 4 and 5781 filed by the California Franchise Tax Board on January 15, 2004.**

VENTAS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03423154

Taxpayer's Counsel

Amy L. Silverstein

Silverstein & Pomerantz, LLP

Filed – 08/05/03

FTB's Counsel

Paul Gifford

Issue Whether Plaintiff elected to use the mark-to-market method of accounting for California purposes.

Year 1997 Amount \$205,874.00

Status **Court's Notice of Time and Place of Trial that the Court Trial is set for May 17, 2004, and the Notice of Mandatory Settlement Conference is scheduled for April 22, 2004; Discovery proceeding.**

WEINGARTEN, SAUL M. v. Franchise Tax Board

San Francisco Superior Court Docket No. 996766

Taxpayer's Counsel

Saul M. Weingarten

Saul M. Weingarten & Associates

Filed - 7/28/98

FTB's Counsel

Marguerite Stricklin

Issues

1. Whether the Board of Equalization followed proper procedures in considering the taxpayer's appeal.
2. Whether taxpayer's real estate investments were subject to passive activity loss limitations.
3. Whether FTB properly calculated depreciation with respect to various properties.
4. Whether FTB properly calculated the sales price of a piece of property sold by the taxpayer.
5. Whether penalties were improperly imposed.

Years 1987 through 1989 Amount \$88,966.00 Tax
\$22,241.75 Penalty

Status Answer to Complaint filed October 27, 1998.

YOO, Won S. and Insook v. Franchise Tax Board

San Diego Superior Court Docket No. GIC807106

Taxpayer's Counsel

Daniel J. Cooper, Esq.

Law Offices of Daniel J. Cooper

Filed – 03/13/03

FTB's Counsel

Leslie Branman Smith

Issue Whether the taxpayers are entitled to a charitable deduction on the sale of property to The Nature Conservatory.

Years 1991 and 1994 Amount \$178,858.00

Status **Trial held on January 21, 2004.**

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Taxpayer's Counsel

Dwayne M. Horii

William C. Choi

Rodriguez, Horii & Choi

Filed - 05/22/02

FTB's Counsel

Donald R. Currier

- Issues
1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
 2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years 1986 and 1987 Amount \$1,741,534.00

Status Trial scheduled for February 25, 2004.